

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANDRE CALHOUN & JOHN MORROW	:	CIVIL ACTION
	:	
v.	:	
	:	
MARTIN HORN, et al.	:	NO. 96-350

FINDINGS of FACT and CONCLUSIONS of LAW

Norma L. Shapiro, J.

October 28, 1997

Plaintiffs Andre Calhoun ("Calhoun") and John Morrow ("Morrow") are two prisoners in custody at the State Correctional Institution at Graterford ("Graterford"). They filed a complaint against the following prison administrators: Martin Horn ("Horn"); Donald Vaughn ("Vaughn"); Thomas Stachelek ("Stachelek"); Donna Hale ("Hale"); Dennis Oldt ("Oldt"); and Delores Merithew ("Merithew") (collectively the "Commonwealth officials"). Plaintiffs also named as defendants the following medical personnel at Graterford: Dennis L. Moyer, M.D. ("Dr. Moyer"), the prison's medical director; Richard A. Friedman, M.D. ("Dr. Friedman"), the chief nephrologist at the prison; Missy Healy ("Healy"), a dietician in Graterford's Renal Treatment Unit ("RTU"); and Susan Artale ("Artale"), an administrator for the RTU (collectively the "RTU staff"). Calhoun and Morrow alleged the defendants violated their Eighth Amendment rights by denying them adequate medical treatment.

Plaintiffs sought a preliminary injunction. The court

converted hearings held on January 28, 1997, March 25, 1997, April 24, 1997 and July 1, 1997 into a non-jury trial on the merits of plaintiffs' claims. In accordance with Federal Rule of Civil Procedure 52(a), the court enters the following findings of fact and conclusions of law.

## **I. Findings of Fact**

1. Calhoun and Morrow are inmates in the custody of the Pennsylvania Department of Corrections at Graterford.

2. Both Calhoun and Morrow receive regular dialysis treatment at Graterford. The dialysis unit is operated under a contract with Renal Treatment Centers, Inc. ("RTC").

3. Calhoun and Morrow sought to represent a class of Graterford inmates receiving treatment in the RTU. Some inmates wanted to be housed in the RTU; others sought housing in the general prison population. The court denied plaintiffs' motion for class certification by Memorandum and Order dated October 8, 1997.

4. All parties agreed to select an independent medical expert to examine the RTU, interview the plaintiffs, catalog their complaints, review their records and submit a report on the Graterford renal treatment program. The parties selected Joseph E. Bisordi, M.D. ("Dr. Bisordi"), chair of the medical review board of the End Stage Renal Disease ("ESRD") Network No. 4, as the independent expert.

5. Dr. Bisordi conducted a tour of the Graterford facility on December 13, 1996. Counsel for both sides and various prison officials were present. Dr. Bisordi submitted a written report stating his findings. No other expert provided oral or written testimony regarding the conditions or adequacy of the RTU.

6. The RTU staff observe universal precautions throughout the facility. The quality assurance procedures implemented in the RTU are "similar to those used throughout the RTC system." The "overall nutritional status of this unit's patients appears good compared to the typical dialysis population." (Report of Dr. Bisordi at 3-4).

7. The RTU staff provide adequate counseling of patients who voluntarily shorten or skip their treatments. The RTU staff have implemented short- and long-term care plans for the patients; the nursing staff make "extensive documentation." The RTU staff make "appropriate use" of lab analysis each month. (Bisordi Report at 4-5).

8. Referrals from Dr. Friedman to regular prison doctors and outside specialists "appear to occur smoothly and in a timely manner," although formerly there were "problems with communication and mutual education." (Bisordi Report at 5).

9. Approximately two-thirds of the Graterford patients have a Urea Reduction Ratio ("URR") of less than 65%, while only about one-third of the patients should have a URR level below

65%. Staff at the RTU attribute the problem to early sign-offs by the patients. (Bisordi Report at 5, 8).

10. Ten patients of the Graterford RTU have died since the unit began operating in 1994. The mortality rate at the RTU is approximately 16%, that is below the national average. (Bisordi Report at 6).

11. "Overall, the functioning of the Dialysis Unit at SCI-Graterford appears to be within the range encountered in adequately functioning facilities throughout the Commonwealth." The "operation and outcomes of this unit are, overall, consistent with those found in some dialysis units throughout the [ESRD] Network." (Bisordi Report at 8).

12. The renal patients' diets are adequate; the renal equipment "appeared to be functioning properly and to be properly maintained"; the unit is crowded but "sanitation is adequate"; staffing ratios are "satisfactory" and the staff are "adequately trained"; emergency equipment and procedures are "appropriate"; "quality assurance protocols are adequate"; and current sick call procedures offer "appropriate access to care." (Bisordi Report at 10-11).

13. Any problems with the RTU "are not unique to the [Graterford] facility and have been found on site visits" at other renal facilities throughout Pennsylvania. (Bisordi Report at 8).

14. Inmates receive appropriate medical care whether housed in the RTU or in the general prison population. There is no medical need to house renal patients in one or the other location. (Bisordi Report at 10).

15. The Commonwealth officials had no direct role in renal treatment in the RTU.

## **II. Discussion**

Calhoun and Morrow filed their claim against all defendants pursuant to 42 U.S.C. § 1983.<sup>1</sup> They allege that the defendants intentionally deprived them of adequate medical care while in state custody, in violation of their rights under the Eighth Amendment.<sup>2</sup>

The primary purpose for the Eighth Amendment was "to

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<sup>1</sup> The statute provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

42 U.S.C. § 1983.

<sup>2</sup> The Eighth Amendment states: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII. The Eighth Amendment applies to the states through the Due Process Clause of the Fourteenth Amendment. See Robinson v. California, 370 U.S. 660, 666 (1962).

proscribe 'torture[s]' and other barbar[ous]' methods of punishment." Estelle v. Gamble, 429 U.S. 97, 102 (1976) (citation omitted). The Eighth Amendment prohibits punishments that are incompatible with "the evolving standards of decency that mark the progress of a maturing society," Trop v. Dulles, 356 U.S. 86, 101 (1958), or that involve "'unnecessary and wanton infliction of pain.'" Estelle, 429 U.S. at 103 (quoting Gregg v. Georgia, 428 U.S. 153, 173 (1976) (joint opinion of Stewart, Powell, & Stevens, JJ.)); see Hassine v. Jeffes, 846 F.2d 169, 174 (3d Cir. 1988). The Eighth Amendment forbids punishment that is "'repugnant to the conscience of mankind.'" Lousiana ex rel. Francis v. Resweber, 329 U.S. 459, 471 (1947) (Frankfurter, J., concurring) (quoting Palko v. Connecticut, 302 U.S. 319, 323 (1937)).

The Eighth Amendment applies to medical treatment in prison. See Estelle, 429 U.S. at 103; West v. Keve, 571 F.2d 158, 161 (3d Cir. 1978). "An inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met. In worst cases, such a failure may actually produce physical 'torture or a lingering death,' ... the evils of most immediate concern to the drafters of the Amendment." Estelle, 429 U.S. at 103. (citation omitted).

To recover for denial of medical treatment, the prisoner must prove: 1) the prisoner suffered from a serious medical

condition;<sup>3</sup> and 2) the prison officials were "deliberately indifferent" to the prisoner's medical needs. Id. at 104; see also Wilson v. Seiter, 501 U.S. 294, 297 (1991); White v. Napoleon, 897 F.2d 103, 108-09 (3d Cir. 1990); West, 571 F.2d at 161. "To be cruel and unusual punishment, conduct that does not purport to be punishment at all must involve more than ordinary lack of due care for the prisoner's interests or safety." Whitley v. Albers, 475 U.S. 312, 319 (1986) (quoted in Wilson, 501 U.S. at 298-99). The prison officials' conduct must rise to the level of "obduracy and wantonness." Id.

The Eighth Amendment does not protect prisoners from medical malpractice. The mere failure to provide optimal medical care does not give rise to a constitutional violation. See Estelle, 429 U.S. at 106 ("[A] complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a claim of medical mistreatment under the Eighth Amendment."); Inmates of the Allegheny County Jail v. Pierce, 612 F.2d 754, 762 (3d Cir. 1979) [hereinafter "Allegheny County"]. The prisoner must allege acts by prison officials "sufficiently harmful" to constitute deliberate indifference. Id. The acts must be "sufficiently egregious to rise to the level of a constitutional violation." White, 897 F.2d at 109.

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<sup>3</sup> Defendants concede that plaintiffs' renal conditions are "serious," so the court only needs to determine if the defendants have exhibited "deliberate indifference" to that serious need.

In Estelle, 429 U.S. at 105 n.10., the Court cited examples of "deliberate indifference" by prison doctors: Williams v. Vincent, 508 F.2d 541 (2d Cir. 1974) (prison doctor made no effort to repair prisoner's maimed ear); Martinez v. Mancusi, 443 F.2d 921 (2d Cir. 1970), cert. denied, 401 U.S. 983 (1971) (prison officials refused to administer pain killers prescribed by the surgeon for leg surgery or allow prisoner to comply with the surgeon's instructions, see id. at 922-23; such conduct amounted to "deliberate indifference" to prisoner's well-being, see id. at 924).

Where a prison medical facility has provided extensive treatment for an inmate, deliberate indifference cannot be demonstrated. See Estelle, 429 U.S. at 107 (no recovery by prisoner seen by medical personnel on seventeen occasions over a three-month period.). "The Eighth Amendment does not confer upon this Court the authority to impose upon the Graterford Administration, or any prison administration, our notions of enlightened policy." Hassine, 846 F.2d at 175.

The courts "afford[] considerable latitude to prison medical authorities in the diagnosis and treatment of the medical problems of inmate patients." Allegheny County, 612 F.2d at 762. As long as the prison provides "some care" that is adequate, there is no violation of the Eighth Amendment. Brinton, 554 F. Supp. at 389; see Roach v. Kligman, 412 F. Supp. 521, 525 (E.D.



Pa. 1976). The prison must provide adequate care, not the most effective medical treatment.<sup>4</sup>

Lack of prison medical care violates the Eighth Amendment when prison doctors intentionally ignore the prisoners' conditions and cause them to suffer severe pain. See, e.g., White, 897 F.2d at 109; United States ex rel. Walker v. Fayette County, 599 F.2d 573, 575 (3d Cir. 1979). In White, the doctor "deliberately ignore[d] the express orders of a prisoner's prior physician." Id. at 109. The doctor's intentional refusal to follow the instructions of prior treating physicians for no apparent reason and other acts deliberately causing prisoners pain and suffering amounted to "deliberate indifference" to prisoners' serious medical needs. See id. at 110.

In Walker, acts by the prison medical staff were intended to cause pain and suffering. Walker informed prison officials he was addicted to heroin, but they gave him no medical attention for the first ten days of his incarceration. Walker suffered ten days of "severe withdrawal symptoms, including 'stomach cramps, chills, sweating, lack of sleep, 'dry heaves,' and much pain and suffering.'" Walker, 599 F.2d at 574 (citing Walker's complaint). The medical staff, knowing of Walker's condition,

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<sup>4</sup> Dr. Bisordi reported that renal transplants improve patients' quality of life and survival rates; transplants are less expensive over time than non-surgical care. See Bisordi Report at 9. But Graterford need not provide renal transplants if it otherwise offers adequate medical care.

intentionally violated their legal duty under state law to medically examine all prisoners within forty-eight hours after admission and were "deliberately indifferent" to his medical needs. Id. at 576.

Dr. Bisordi determined the RTU observes universal precautions throughout the facility. See Bisordi Report at 3. He reported the quality assurance procedures implemented in the RTU are "similar to those used throughout the RTC system," id., and the nutritional status of Graterford's RTU patients is "good compared to the typical dialysis population." Id. at 4.

Dr. Bisordi concluded that the medical staff provide appropriate amounts of patient counseling. See id. The RTU staff implement care plans for the patients and make "extensive documentation" of each patient's medical history. Id. at 5. The RTU staff perform proper lab analysis on the patients. See id.

Medical referrals from Dr. Friedman to the regular prison doctors and to outside specialists occur "smoothly and in a timely manner." Id. Dr. Bisordi found the renal equipment well-maintained and functioning properly and the staff adequately trained. See id. at 10-11. "Overall, the functioning of the Dialysis Unit at SCI-Graterford appears to be within the range encountered in adequately functioning facilities throughout the Commonwealth." Id. at 8.

Dr. Bisordi recommended areas for improvement in the

Graterford RTU. Approximately two-thirds of the Graterford patients had URR levels below 65%, but in his opinion only one-third of the patients should have URRs below that level. See id. at 5, 8. Dr. Bisordi recommended that the RTU implement a corrective action plan to educate the patients on the need to stay connected to the dialysis machines for at least four hours each time. See id. at 9.

Dr. Bisordi suggested the RTU increase dialysis time, show greater awareness of the risk of hepatitis B, improve communication among medical providers and consider the option of renal transplants. See id. at 8. Dr. Bisordi and the ESRD Network often make the same recommendations to non-penal renal facilities throughout Pennsylvania. See id.

The Graterford RTU is performing "within the range encountered in adequately functioning facilities throughout the Commonwealth." Id. at 8. If Dr. Friedman operates an "adequate" RTU facility, he is not "deliberately indifferent" to his patients' needs. See, e.g., Wilson, 501 U.S. at 298; Estelle, 429 U.S. at 104; West, 571 F.2d at 108.

### **III. Conclusions of Law**

1. This court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and personal jurisdiction over the parties.
2. Venue is appropriate pursuant to 28 U.S.C. § 1391(b).
3. Plaintiffs Calhoun and Morrow have failed to establish

that the RTU treatment program amounts to "deliberate indifference" to their serious medical needs. See Estelle, 429 U.S. at 102

4. Plaintiffs Calhoun and Morrow have not established that the prison's policy to refuse inmates renal transplants constitutes "deliberate indifference" to their serious medical needs.

5. Plaintiffs Calhoun and Morrow have no constitutional right under the Eighth Amendment to demand a particular treatment, as long as they receive adequate care. See, e.g., Norris v. Frame, 585 F.2d 1183, 1188 (3d Cir. 1978).

6. Judgment will be entered in favor of the Commonwealth officials and the RTU staff.

An appropriate order follows.

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JUDGMENT ORDER

AND NOW, this 28th day of October, 1997, following a non-jury trial conducted between January, 1997 and July, 1997, and for the reasons stated in the accompanying Findings of Fact and Conclusions of Law, it is hereby **ORDERED** that:

1. Judgment is **ENTERED** in favor of all defendants and against plaintiffs Andre Calhoun and John Morrow in accordance with Federal Rule of Civil Procedure 58.

2. The Court's Memorandum and Order dated October 8, 1997 granting summary judgment in favor of defendants Dr. Dennis Moyer, Dr. Richard Friedman, Missy Healy and Susan Artale is **VACATED**.

3. The Court's scheduling Order dated October 16, 1997 is **VACATED**.

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Norma L. Shapiro, J.